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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,990	12/17/2003	F. Murphy Sprinkel JR.	033018-150	6439

21839 7590 08/25/2005

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EXAMINER

MENDOZA, MICHAEL G

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

7/1/05

Office Action Summary	Application No. 10/736,990	Applicant(s) SPRINKEL ET AL.	
	Examiner Michael G. Mendoza	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 30 and 36 have been considered but are moot in view of the new ground(s) of rejection. The Applicant has amended the claims adding new limitations and therefore changing the scope of the claims. The newly amended claims require a new search, new consideration, and require a new grounds of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

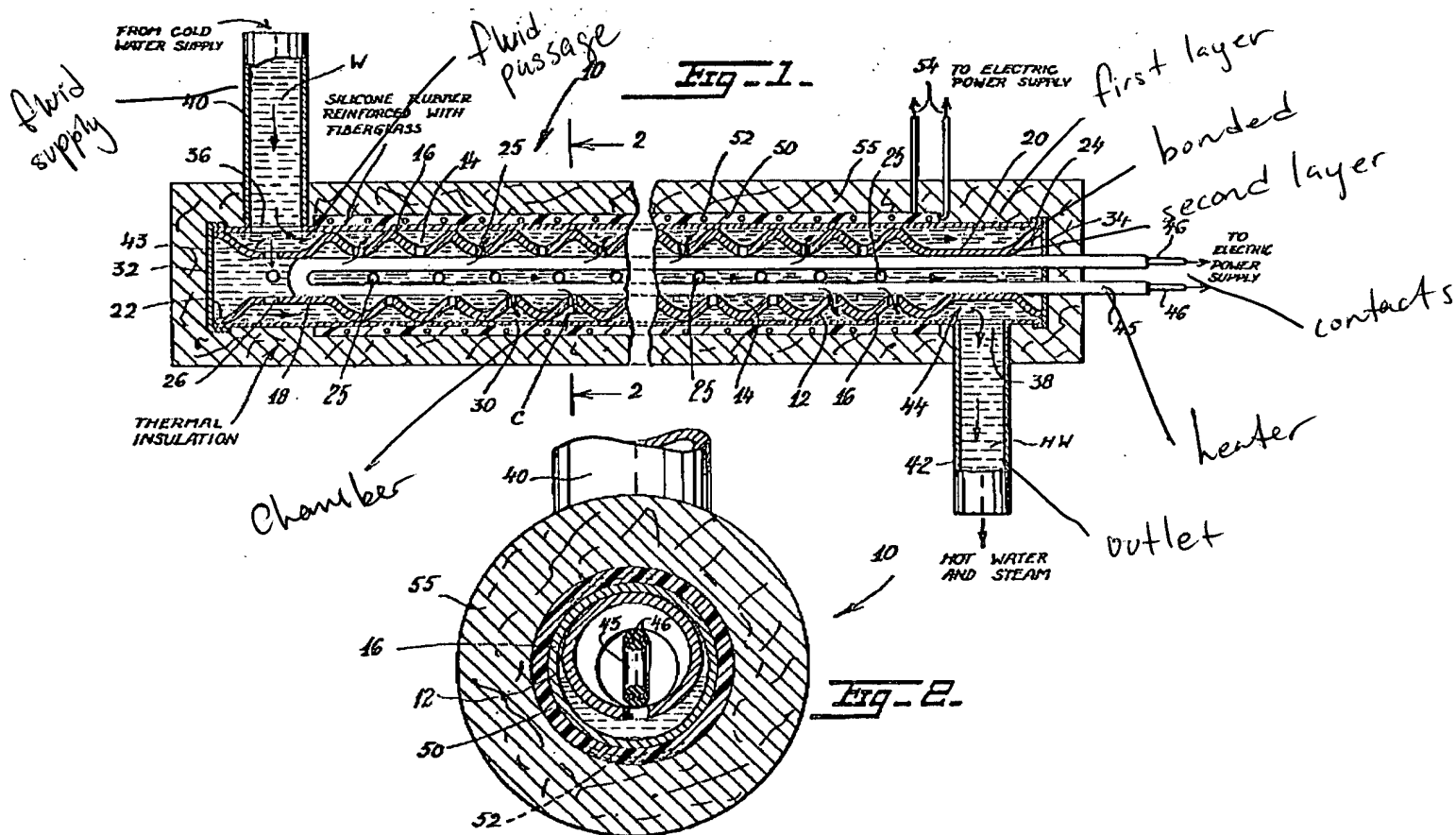
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 30, 32-35, 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Cooksley 3968346.

4. Cooksley teaches an aerosol generator, comprising: a fluid passage between a first layer and a second layer, the first layer having a surface bonded to a surface of the second layer, and the first layer and the second layer at least partially defining the fluid passage; a fluid supply disposed to provide a fluid in liquid phase to the fluid passage; a

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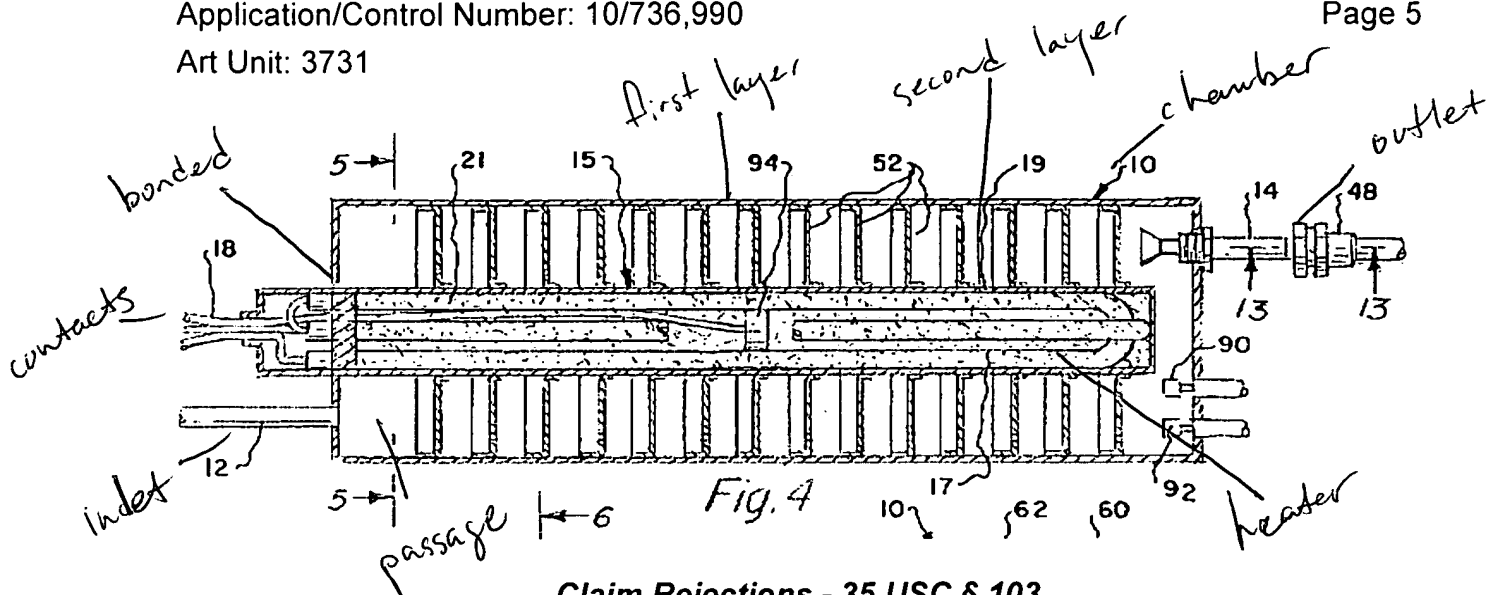
heater disposed to volatilize the fluid in the fluid passage; a single outlet disposed to receive the volatilized fluid and direct the volatilized fluid out of the fluid passage; wherein the heater is arranged to conduct heat, through the first and/or second layer, to the fluid in the fluid passage; and wherein the heater is in electrical contact with first and second contacts which pass an electrical current through the heater, and wherein the volatilized fluid is ejected from the fluid passage when the electrical current is passed through the heater; wherein the aerosol generator fully capable of volatilizing a medicated fluid material; a chamber connected to receive the fluid in liquid phase from the fluid supply and to provide the fluid to the fluid passage, wherein the chamber contains a predetermined amount of the fluid in liquid phase.



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5. Claims 30, 32, 33, 35, 36, 38, 39, 41-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Hutchinson 6393212.

6. Hutchinson teaches an aerosol generator, comprising: a fluid passage between a first layer and a second layer, the first layer having a surface bonded to a surface of the second layer, and the first layer and the second layer at least partially defining the fluid passage; a fluid supply disposed to provide a fluid in liquid phase to the fluid passage; a heater disposed to volatilize the fluid in the fluid passage; a pressure sensor sensitive to pressure drops for actuating the heater via circuitry to volatilize the fluid in the fluid passage (col. 12, lines 9-11); a single outlet disposed to receive the volatilized fluid and direct the volatilized fluid out of the fluid passage; wherein the heater is arranged to conduct heat, through the first and/or second layer, to the fluid in the fluid passage; wherein the heater is in electrical contact with first and second contacts which pass an electrical current through the heater, and wherein the volatilized fluid is ejected from the fluid passage when the electrical current is passed through the heater; wherein the aerosol generator fully capable of volatilizing a medicated fluid material; a chamber connected to receive the fluid in liquid phase from the fluid supply and to provide the fluid to the fluid passage, wherein the chamber contains a predetermined amount of the fluid in liquid phase; and wherein the outlet is disposed at an angle with respect to an axis of the fluid passage.

**Claim Rejections - 35 USC § 103**

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 31 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooksley or Hutchinson in view of Howell et al. 5743251.

9. Cooksley and Huthchinson both fail to teach wherein the layers comprise a material selected from the group of consisting of alumina, zirconia, silica and mixtures thereof. However, Howell et al. does teach a wherein a layer comprises a material selected from the group consisting of alumina, zirconia, silica and mixtures thereof (col. 3, lines 65-67). Therefore it would have been obvious to one of ordinary skill in the art to include the material of Howell et al. in the layers of Cooksley or Huthchinson. to prevent oxidation during operating temperatures.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM



ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
8/22/05